

**ORDINANCE NO. S2015-3**

**AN ORDINANCE RELATING TO ECONOMIC DEVELOPMENT PLANNING**

**AN ORDINANCE OF THE CITY OF GALLUP, NEW MEXICO, RELATING TO ECONOMIC DEVELOPMENT PLANNING UNDER THE LOCAL ECONOMIC DEVELOPMENT ACT OF THE STATE OF NEW MEXICO §5-10-1 THROUGH 5-10-13 NMSA 1978 COMP.; SUPPLEMENTING ORDINANCE C2003-7 ADOPTED ON JULY 22, 2003, AND SUPPLEMENTING ORDINANCE S2012-4 WITH THE FOLLOWING AMENDMENTS TO THE ECONOMIC DEVELOPMENT PLAN ORDINANCE; PROVIDING FOR SEVERABILITY; AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.**

**WHEREAS**, local governments are allowed to provide direct or indirect assistance to qualifying businesses under state law; and,

**WHEREAS**, pursuant to state law, the City of Gallup needs to have a local economic development plan to allow for public support; and,

**WHEREAS**, the City desires to update and supplement the City of Gallup's Economic Development Plan adopted by the City of Gallup on July 22, 2003, and the update of August 14, 2012, to foster and promote economic development.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GALLUP, NEW MEXICO, DO ORDAIN AS FOLLOWS:**

The following is added to Ordinance C2003-7 and S2012-4 to supplement the City of Gallup's economic development plan:

**Section 1. Economic Development Plan**

**1.1 Short Title.**

This Ordinance may be cited as the "Economic Development Plan Ordinance."

**Section 2. Authority.**

**2.1** The Economic Development Plan Ordinance is enacted pursuant to the statutory authority conferred upon municipalities to allow public support of economic development (N.M. Stat. Ann. Section 5-10-1 through Section 5-10-13, 1978).

### **Section 3. Purpose.**

3.1 The purpose of the Economic Development Plan/Ordinance is to allow public support of economic projects to foster, promote and enhance local economic development efforts while continuing to protect against the unauthorized use of public money and other public resources. Further, the purpose of the ordinance is to allow the City to enter into one or more joint powers agreement with other local governments to plan and support regional economic development projects in McKinley County.

#### **3.2 Local Economic Development Act.**

Local governments are allowed to provide direct or indirect assistance to qualifying business for furthering or implementing economic development plan and projects, furthermore local and regional governments have the authority to contribute assets to development projects; however, the imposition of a tax must be approved by voters in referendum.

**Eligible uses:** Municipalities may impose municipal infrastructure gross receipts tax and dedicate the revenue for economic development projects. A total of 0.25% tax (in four increments of 0.0625%) may be imposed. Counties similarly may direct the proceeds of county infrastructure gross receipts tax. Counties may impose up to .12555% in two .0625 increments.

### **Section 4. Definitions as used in the Economic Development Plan Ordinance:**

4.1 *Economic development project* means to provide for direct or indirect land, buildings or other infrastructure; public works improvements essential to the location assistance to a qualifying business and film include the purchase, permits, lease, grant, or construction, reconstruction, improvement or other acquisition or conveyance of expansion of a qualifying business; and payments for professional services contracts necessary for local or regional governments to implement a plan or project.

4.2 *Qualifying entity* means an existing or proposed corporation, limited liability company, partnership, joint venture, syndicate, association or other person that is one or combination of two or more of the following:

- A. An industry for manufacturing, film, processing, or assembling of any agricultural or manufactured products;
- B. A commercial enterprise for storing, warehousing, distributing, or selling products of agriculture, mining or industry, but other than provided in Paragraph D of this subsection, not including any enterprise for sale of goods or commodities at retail or for the

distribution to the public of electricity, gas, water, or telephone or other services commonly classified as public utilities;

- C. A business in which all or part of the activities of the business involves the supplying of services to the general public or to government agencies or to a specific industry or customer, but, other than provided in Paragraph (D) of this subsection, not including business primarily engaged in the sale of goods or commodities at retail;
- D. A telecommunication sales enterprise that makes the majority of its sales to persons outside of New Mexico;
- E. An Indian Tribe or pueblo or a federally chartered tribal corporation.
- F. A business that is the developer of a metropolitan redevelopment project;
- G. A cultural facility.

4.3 ***Project participation agreement*** means an agreement between a qualifying entity and the City whereby the City provides assistance to an economic development project in exchange for the benefits received as set forth in this section.

4.4 ***Governing body*** means the City Council of Gallup.

4.5 ***Cultural Facility*** means a facility that is owned by the state, a county, a municipality or a qualifying entity that serves the public through preserving, educating and promoting the arts and culture of a particular locale, including theaters, museums, libraries, galleries, cultural compounds, educational organizations, performing arts venues and organizations. Fine arts organizations, studios and media laboratories and live-work housing facilities.

4.6 ***Arts and Cultural District*** means a developed district of public and private uses that is created pursuant to the Arts and Cultural District Act (15-5A-1 through 15-5A-7 NMSA 1978).

4.7 **Northwest Council of Governments Revolving Loan Fund** means funds provided by the North West New Mexico Council of Governments, hereinafter NWNMCOG, to be used for the financing or development of a small or emerging business. Eligible uses are: Assistance (providing assistance for marketing studies, feasibility studies, business plans, training, etc.) to small and emerging businesses; purchasing machinery and equipment to lease to small and emerging business; creating a revolving loan fund (providing partial funding, collateral required, as a loan to a small and emerging business for the purchase of equipment, working capital, or real estate); or construct a building for a business incubator for small and emerging businesses.

## **Section 5. Economic Development Plan.**

5.1 The City Manager after approval of the governing body may assist Economic Development Projects in any legally permissible manner including but not limited to provisions of land, buildings and infrastructure provided that all the requirements of this ordinance are met. The City may provide land, buildings or infrastructure it already owns, or it may build, purchase or lease the facilities needed for an economic development project. The City at its discretion may bear the full cost or contribute a portion of the costs including the waiver of applicable fees. The City, at its discretion, may also contribute to the payment of costs for professional service contracts such as industry feasibility studies and planning and design services needed to implement a project.

5.2 The governing body may consider offering all forms of assistance allowed under this ordinance and any other legally permissible forms of assistance; however, this does not establish any obligation on the City's part to offer any specific type or level of assistance with an incentive application.

## **Section 6. Greater Gallup Economic Development Corporation (GGEDC).**

6.1 The governing body assigns the GGEDC Board of Directors the following responsibilities with regard to the economic development plan for the City of Gallup:

- A. Reviewing and making recommendations to the governing body on applications for assistance for economic development projects; and
- B. Reviewing and making recommendations to the governing body on applications for industrial revenue bonds (IRB'S), Metropolitan Revitalization Area (MRA), and Tax Incremental Development Districts (TIDD).

6.2 The GGEDC shall at all times provide for a Mayor and or City Manager as Ex Officio Board of Directors Member for the City of Gallup, the City Manager shall appoint a member of the Board of Directors with the advice and consent of the City Council.

6.3 The governing body assigns NWNMCOG, the responsibility for administering the Revolving Loan Fund (RLF).

- A. Reviewing and making recommendations to the governing body on applications for assistance for economic development projects, subdivision review and land uses;
- B. Loans must be for the establishment of new business with consideration of a startup creating new jobs, the expansion of existing business, creation of employment opportunities, saving existing jobs, or community development projects.

- C. Interest income and fees may be used for administrative costs, technical assistance to borrower or debt retirement;
- D. Interest income and fees may be used for administrative costs, technical assistance to borrower or debt retirement;
- E. All collections that are not used for the above authorized expenses from the operation of the RLF must be made available for relending to eligible applicants;
- F. All loans must be adequately secured;
- G. An annual audit is required.

## **Section 7. Application Requirements.**

7.1 Any qualifying entity meeting the definition set forth in subsection 4.2 may propose an economic development project to the City. Meeting the definition of a qualifying entity does not create any obligation on the part of the City of Gallup.

7.2 Applications shall contain the following information for business applicants:

### **A. Identification information.**

- 1) Complete name and address of entity;
- 2) Incorporation papers with by-laws;
- 3) List of board of directors and executive director, with addresses, and resumes of all directors and officers;
- 4) Resumes of all directors and officers.

### **B. Evidence of financial solvency (personal statement of principles):**

- 1) Financial statement (income statement and balance sheets) for the past three years;
- 2) Federal tax number, New Mexico State Taxation and Revenue number and county business license;
- 3) Projected income statement for at least three years.

### **C. Evidence of organization capacity:**

- 1) Brief history of the entity;
- 2) Organizational chart of the entity;
- 3) Business plans for the entity and proposed project (shall include pro-forma cash flow analysis).

- D. The project participation agreement and any other pertinent information will be forwarded to the governing body for final consideration at a public meeting.

E. The project participation agreement and any other pertinent information will be forwarded to the governing body for final consideration at a public meeting.

F. Revolving Loan Fund Application requirements:

- 1) Individual Financial Statements of Principals. Guarantors/Co-signors-less than 90 days old.
- 2) Income Tax Returns for past three years of applicants, guarantors. Form 1040 and schedule C.
- 3) Applicant Business Financial Statements, most recent and past three fiscal years. Balance Sheets, Income Statements and Cash Flow Statements.
- 4) Financial Projections-monthly year 1, annually years 2 and 3.
  - i. Pro-Forma Cash Flow Statements
  - ii. Income and Expense Projections
  - iii. Balance Sheets
- 5) Resume' or professional background information on principals.
- 6) Corporate or Partnership Information:
  - i. Articles of Incorporation or Partnership Agreement
  - ii. Corporation Resolution/Authorization to Borrow and to Pledge Collateral.
  - iii. Certificate of Incorporation.
- 7) Real Estate Information:
  - i. Value Estimation of Appraisal
  - ii. Plans and Specifications
  - iii. Construction Cost Estimates and Source thereof
  - iv. Development Budget
  - v. Cash Sources and Uses Statement
  - vi. Legal Description and/or Warranty Deed
  - vii. Address of Property
  - viii. Survey
  - ix. Title Search/Insurance
  - x. Permanent Financing Commitment, if applicable
  - xi. Subcontractor Listing
  - xii. Builders' Risk/Hazard Insurance
  - xiii. Balance Outstanding on First Mortgage and Name of Mortgage Holder
  - xiv. Project Timetable, including construction period, marketing, sales, and/or rent up period
- 8) Miscellaneous Information:
  - i. Evidence of life insurance
  - ii. Valuation of Appraisal or Collateral
  - iii. Aging and Listing of Accounts Receivable
  - iv. Evidence of Insurance on Collateral
  - v. Other-project specific-as required by loan committee

## **Section 8. Applicable Review Criteria.**

8.1 Application for economic development projects requesting economic assistance from the City, which meet the policies and objectives of the City's economic development plan, shall receive priority.

Examples include, but are not limited to:

- A) Manufacturing firms ((including intellectual property such as computer software);
- B) Projects , which enhance the exporting capacity of companies and/or provide goods and services, which currently have to be imported into Gallup;
- C) Private companies seeking to build, expand or relocate facilities;
- D) Private companies which provide facilities or services which enhance the ability of Gallup businesses to operate;
- E) Organizations, which assist business start-ups or bring small companies together to increase their competitive abilities. This must involve a tangible project, which will create jobs and promote an industry. Examples include, but are not limited to:
  - 1) Business incubators;
  - 2) Art incubators or coalition (e.g. a performing arts coalition seeking construction rehearsal or performance facilities);
  - 3) Public markets for farmers, gardeners, crafts, etc.; and,
  - 4) Organizations which foster economic development by promoting work force development efforts such as apprenticeships or other job training programs;
- F) Projects in industry clusters listed above are particularly encouraged, but others are eligible to apply as well. The intention is to retain flexibility in the use of incentives; and,
- G) Qualifying entities with existing contract or projects with the county when this plan is adopted may propose a restructuring of their projects as an economic development project.

8.2 All applications for economic development projects requesting economic assistance from the City shall submit a cost benefit analysis. Preparing a cost benefit analysis shall be the responsibility of the applicant. The City retains the right to specify a format and methodology for the cost-benefit analysis. The GDC shall review and approve the methodology used. The source and rationale for any multiplier effects shall be identified. The cost-benefit analysis shall show that the county will recoup the value of its donation within a period of ten years. The analysis shall address the following:



- A) The number and type of jobs to be created, both temporary construction jobs and permanent jobs (by New Mexico Department of Labor job category);
- B) Pay scale of jobs;
- C) Determination of which jobs are expected to be filled locally and which will be filled by transfers from other facilities or recruited from outside the Gallup area;
- D) Total payroll expected at start-up and after one year;
- E) Anticipated impact on local tax base; and,
- F) Anticipated impact on local school systems.

8.3 All applicants for economic development projects requesting economic assistance from the City shall require the same review required of industrial revenue bond applications. This review shall focus on environmental and community impacts of proposed projects. Special attention shall be given to job training and career advancement programs and policies. Projects shall demonstrate a strong commitment to providing career opportunities for Gallup area residents. Cultural impacts of projects shall also be considered.

8.4 Any qualifying entity seeking assistance shall prepare and make available a job training and career development plan for their employees

8.5 All applicants for economic development projects requesting economic assistance from the City shall clearly demonstrate the benefits, which will accrue to the community as a result of the donation of public resources. The City has considerable flexibility in determining what is considered as adequate benefits. Benefits such as providing components or production capabilities, which enhance a targeted industry cluster, or addressing critical deficiencies in regional economy, may be recognized. The benefits claimed of any proposal will receive careful scrutiny. However, it is the intent of this ordinance to be flexible in the evaluation of these benefits, and to recognize the qualitative as well as quantitative impact of a proposal.

8.6 All applicants for economic development projects requesting assistance from the City shall clearly demonstrate how the qualifying entity is making a substantive contribution. The contribution shall be of value and may be paid in money, in-kind services, jobs, expanded tax base, property or other thing or service of value for the expansion or improvement of the economy. The City retains flexibility in defining the "substantive contributions". The benefits identified in the previous paragraphs may be accepted as adequate contributions on their own, or as cash donations may be required. Assistance in providing affordable housing to its employees or the community at large may also qualify. Determination of what constitutes an acceptable contribution for a given project shall be at the discretion of the governing body.



8.7 Applications for loans from the NWNMCOG revolving loan fund shall clearly demonstrate how the qualifying entity is making a substantive contribution. The contribution shall be of value and may be paid in money, in-kind services, jobs, expanded tax base, property or other thing or service of value for the expansion or improvement of the economy. Determination of what constitutes an acceptable contribution for a given project shall be at the discretion of the governing body.

## **Section 9. Public Safeguards.**

9.1 All economic development projects receiving assistance from the City shall be subject to an annual performance review conducted by the GGEDC. This review shall evaluate whether the project is attaining the goals and objectives set forth in the project participation agreement. This review shall be presented to the governing body for their consideration. The governing body at a public hearing may terminate assistance to the economic development project by provisions set forth in the agreement, which terminates the agreement and specifies the disposition of all assets and obligations of the project.

9.2 The City shall retain a security interest, which shall be specific in the project participation agreement. The type security given shall depend upon the nature of economic development project and assistance provided by the county. Types of security may include, but are not limited to:

- A) Letter of credit in the City's name;
- B) Performance bond equal to the City's contribution;
- C) A mortgage or lien on the property or equipment;
- D) Pro-rated reimbursement of donation if company reduces work force or leaves the community before the term agreed to; and
- E) Other security agreeable to both parties.

9.3 Should a qualifying entity move, sell, lease or transfer a majority interest in the economic development project before the expiration of the project participation agreement, the City retains the right to deny any and all assignments, sales, leases or transfers of any interests in the economic development project until adequate assurances are made that the transferee, assignee or lessee is a qualifying entity and that the terms of the agreement will be satisfied by the transferee, assignee or lessee. At its discretion, the City may choose to deny said assignment, lease or transfer or may negotiate a new agreement with the new operator, or the town may reclaim the facility and enter into an agreement with the new qualifying entity.

9.4 Any qualifying entity seeking assistance from public resources shall commit to operate in accordance with its project participation agreement for a minimum of ten years from the date the ordinance is adopted and the governing body passes the project participation agreement.

## 9.5 Safeguards for Revolving Loan Fund-

9.5.1 The NWNMCOG will provide fidelity bond coverage for all persons who have access to revolving loan funds.

9.5.2 The Small Business Development Center (SBDC) at Gallup will serve as a strategic partner with NWNMCOG in service to the effective operation of the RLF in Gallup providing the following services:

9.5.2.1 Provision of technical assistance to NWNMCOG RLF clients with respect to business plans, application packages and other documents related to securing small business financing;

9.5.2.2 Direct counseling with and feedback to NWNMCOG RLF clients related to strengthening business operations and /or meeting financial obligations;

9.5.2.3 On-call mentoring and coaching for NWNMCOG RLF clients related to solving business problems and increasing opportunities for success;

9.5.2.4 Providing linkages as needed and appropriate between NWNMCOG RLF Clients and such specialist resources as may be available to provide advice and guidance with respect to the particular content of the business;

9.5.2.5 Occasional field visits to client businesses as needed to obtain first-hand understanding and impressions of NWNMCOG RLV Client business operations;

9.5.2.6 Specific recommendations to NWNMCOG RLF administrators on ways of improving performance, and success clients, notwithstanding that under no circumstances will the SBDC's serve a regulatory function or make administrative decisions with respect to any client or to the program as a whole;

9.5.2.7 Provision of advice to NWNMCOG RLF administrators or implementation and modification of the RLF work plan.

## **Section 10. Project Participation Agreement.**

10.1 The qualifying entity shall prepare with the City a project participation agreement. This agreement is the formal document, which states the contribution and obligation of all parties in the economic development project. The agreement must state the following items:

- A) The economic development goals of the project;
- B) The contribution of the City and the qualifying entity;
- C) The specific measurable objectives upon which the performance review will be read;
- D) A schedule for project development and goal attainment;
- E) The security being offered for the City's investment;
- F) The procedures by which a project may be terminated and the City's investment recovered; and,
- G) The time period for which the City shall retain an interest in the project. Each project agreement shall have a "sunset" clause after which the City shall relinquish interest in and oversight of the project.

10.2 Each project participation agreement shall be subject to review and approval by the governing body at a public hearing.

**Section 11. Project Monies.**

All projects monies shall be kept in a separate account by the entity and the City, with such account clearly identified. These accounts shall be subject to an annual independent audit.

**Section 12. Termination.**

The Governing body may terminate this ordinance and the City's economic development plan and any or all project participation agreements undertaken under its authority. Termination shall be by ordinance at a public hearing or in accordance with the terms of the project participation agreement. If an ordinance or a project participation agreement is terminated, all contract provisions of the project participation agreement regarding termination shall be satisfied. Upon termination of the ordinance or any project participation agreement, any City monies remaining in the county project accounts shall be transferred to the City's general fund.

**Section 13. Joint Regional Projects.**

The City may engage in economic development projects involving one or more other government entities for projects, which encompass more than one municipality or county. In such instances, the relevant governing bodies shall adopt a joint powers agreement. This agreement will establish the application criteria and the terms of all project participation agreements. Criteria established under a joint powers agreement shall be consistent with the provisions of this ordinance.

**Section 14. Revolving Loan Fund Termination.**

Reporting to the NWNMCOG (Quarterly Reports) Each funded project will be reported on quarterly.

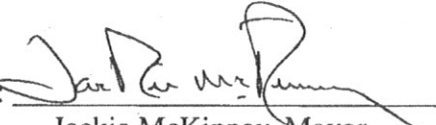
**Section 15. Severability.**

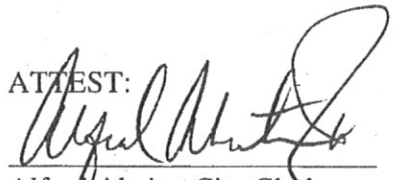
If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

**Effective Date.** This ordinance is hereby declared to be an emergency measure in accordance with §1-6-10 of the City Ordinance and shall go into effect five (5) days after publication as required by law.

**PASSED, ADOPTED AND APPROVED THIS 23<sup>RD</sup> DAY OF JUNE, 2015.**

**CITY OF GALLUP**

By:   
Jackie McKinney, Mayor

ATTEST:   
Alfred Abeita, City Clerk

Vote:

Mayor McKinney	<u>Aye</u>
Councilor Garcia	<u>Aye</u>
Councilor Landavazo	<u>Aye</u>
Councilor Kumar	<u>Aye</u>
Councilor Palochak	<u>Aye</u>

Motion made by: Councilor Kumar

Seconded by: Councilor Garcia